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Attorney Docket No. 1103326-0902
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REMARKS

I. Petition for extension of time

Applicants herewith petition the Commissioner for Patents to extend the time for response to the Office Action mailed June 16, 2008 for one month from July 16, 2008 to August 16, 2008. Authorization is given to charge the extension of time fee of \$120.00 (37 C.F.R. §1.136 and §1.17) to Deposit Account No. 23-1703. Any deficiency or overpayment in connection with this communication should be charged or credited to the above numbered deposit account.

II. Species Election Requirement

The Examiner alleges that the application contains claims directed to more than one species of the generic invention. The species are the material in which the enteric coating layered pellets are suspended. Election of one of the following species is required:

Species I: a viscous medium formed upon dispersion of the pharmaceutically acceptable thickener in the aqueous carrier, and

Species II: a pharmaceutically acceptable viscous aqueous medium.

It is alleged that Species I and II lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

III. Election with Traverse

Applicants respectfully submit that the species election requirement is improper. However, to be fully responsive to the requirement, Applicants elect Species I with traverse. Applicant is also required to elect one specific medium encompassed by the elected species. With traverse, Applicants elect starch as the thickener.

Claims 1-4 and 8-18 read on the elected species.

IV. The Election of Species Requirement is Improper

The claimed invention is directed to the administration of an aqueous suspension comprising a proton pump inhibitor in the form of enteric coated pellets in the treatment of GI disorders, in particular to patients having difficulties swallowing or pediatric patients. The

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suspension is administered via a gastric tube or syringe. As disclosed in paragraph [0015] of the published patent application no. 2007/005398:

It has surprisingly been found that the viscosity of the formed aqueous medium comprising dispersed enteric coating layered pellets of the active substance has an impact on the feeding of the suspension through a tube, such as a gastric or naso-gastric tube. It has been found that the higher viscosity the thinner tubes can be used within certain limits and the solid composition comprising a thickener facilitates and improves the administration, especially to young children. For instance, the handling instruction to patients can be simpler and the administration can be less time consuming.

Therefore, to achieve the stated purpose of the claimed invention, the aqueous suspension is more specifically an aqueous viscous medium in which the enteric coated pellets are suspended. This is the single general inventive concept under PCT Rules 13.1 and 13.2 that links the pending claims 1-18. Under this single general inventive concept, the aqueous viscous medium is (Species I) an aqueous liquid formed by dispersing a thickener in an aqueous carrier or (Species II) an aqueous liquid with a similar viscosity as Species I.

Logic dictates that prior art which is material to the patentability of Species I will also be material to the patentability of Species II. A thorough prior art search that is complete with regard to Species I should uncover prior art that is also material to Species II. Accordingly, Applicants submit that it would not be an undue burden on the Examiner to examine Species I and II in the instant application.

Furthermore, the referenced application is the U.S. national phase application of PCT/SE2004/001113. The same claims were examined by another competent Authority in view of the same PCT Rules 13.1 and 13.2. An objection or rejection based on unity of invention was not raised. It is curious, then, how the same claims in view of the same PCT rules are now found to lack unity of invention.

For all of the foregoing reasons, rejoinder of Species I and II for examination in a single application will demonstrate the Office's commitment to the economic expenditure of resources and efficient examination of applications.

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CONCLUSION

Claims 1-18 are pending. For all of the foregoing reasons, the Examiner is respectfully requested to withdraw the election of species requirement and rejoin the claims of Species I and II for examination in the present application.

Any fee due in connection with this response should be charged to Deposit Account No. 23-1703.

Dated: 15 August 2008

Respectfully submitted,



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